

TERMS AND CONDITIONS

FOR



Certified Nursery Professional Program (CNP)

Nursery & Garden Industry Australia Limited



Nursery & Garden Industry
Australia

1. APPLICABILITY

- 1.1 These terms and conditions govern the supply of CNP Accreditation Services on behalf of NGIA by an Administration Provider to an Applicant pursuant to an Application for CNP Accreditation.
- 1.2 These terms and conditions prevail over any other terms that may be communicated in writing or orally, whether in an order, letter, or other document, in negotiations or otherwise. If there is any inconsistency between these terms and conditions and the CNP Accreditation Procedures or other documents, these terms and conditions shall prevail to the extent of any such inconsistency.
- 1.3 No person acting or purporting to act on behalf of NGIA or a State Association shall have authority to waive or change these terms orally. Waivers or changes shall have effect only if made in writing and signed by a duly authorised officer of NGIA.
- 1.4 NGIA may vary, insert additional provisions and/or amend these terms and conditions at any time by notifying You in writing. Such variation, insertion and/or amendment shall take effect after the expiration of fourteen (14) days of such notice being given, or such longer period as is stipulated in the notice, unless You notify NGIA or the CNP Coordinator in writing that you do not accept them, in which event NGIA may terminate these terms and conditions at any time thereafter by written notice to You.

2. DEFINITIONS

In these terms and conditions:

“Applicant” means an individual with a suitable and relevant education and/or experience within amenity horticulture and/or aligned industry.

“Application” means an application for CNP Accreditation of an Applicant to the Nursery & Garden Industry Australia (NGIA) or the Administration Provider, such application to be in form and substance acceptable to NGIA and/or the Administration Provider;

“Certificate” means the document issued by Nursery & Garden Industry Australia (NGIA) and/or Administration Provider, to record the level of Certified Nursery Professional Accreditation achieved;

“CNP” means Certified Nursery Professional (CNP) program being the accreditation scheme for individuals within amenity horticulture and/or aligned industry, owned and overseen by NGIA;

“CNP Accreditation” means confirmation that the Applicant has been accredited in accordance with the CNP Accreditation Procedures;

“CNP Accreditation Mark” means a symbol, word or other sign that signifies that an Applicant has achieved CNP Accreditation;

“CNP Accreditation Procedures” means the procedures developed by NGIA, as documented in the CNP Accreditation Procedures document (as varied from time to time), and used as the core requirements in assessing the Applicant for the purpose of granting or maintaining CNP Accreditation;

“CNP Accreditation Services” means assessment of an Applicant in accordance with CNP Accreditation Procedures, and includes CNP Accreditation;

“CNP Coordinator” means NGIA or a delegated representative of NGIA acting in that capacity;

“Committee” means people within the nursery and garden industry nominated by Nursery & Garden Industry Australia Limited as representatives of the Certified Nursery Professional program.

“Contract” means the contract between Nursery & Garden Industry Australia (NGIA) or the Administration Provider, and You resulting from Your Application for CNP Accreditation, and shall include these terms and conditions;

“NGIA” means Nursery & Garden Industry Australia Limited (ACN 001 318 136);

“Administration Provider” means any entity acting as agent for NGIA, as agreed, in respect of Applications for CNP, re-accreditation and payment of membership fees.

“State Association” means, in respect of each Application for CNP Accreditation of a Site, that association operating in the State or Territory in which the Site is located, namely, Nursery & Garden Industry NSW & ACT Limited (ACN 001 075 574), Nursery & Garden Industry Victoria Limited (ACN 004 179 373), Nursery & Garden Industry South Australia Incorporated, Nursery & Garden Industry Queensland Industrial Union of Employers, Nursery & Garden Industry Western Australia Inc, Nursery & Garden Industry Tasmania Inc and Nursery & Garden Industry Northern Territory Inc;

“You” means the Applicant applying for CNP Accreditation;

3. CNP ACCREDITATION SERVICES

- 3.1 An Application for CNP Accreditation must be lodged with the CNP Coordinator. The CNP Coordinator agrees to provide, and You agree to accept, the CNP Accreditation Services requested by You pursuant to Your Application.
- 3.2 NGIA may appoint a Committee comprising of members of that the State Associations, to advise NGIA and/or the CNP Coordinator on CNP Accreditation Services, privileges and incentives.

4. FEES AND CHARGES

- 4.1 You must pay to the Administration Provider all fees and charges due in respect of CNP Accreditation Services provided or to be provided to You.
- 4.2 The fees and charges payable under clause 4.1 are those set out in the Application Form current from time to time or as otherwise agreed to by NGIA and You, from time to time.

- 4.3 NGIA reserves the right to amend its schedule of fees and charges at any time and to require payment of fees and charges in advance.

5. ASSESSMENT

- 5.1 You agree to comply with the CNP Accreditation Procedures and to provide the employees, agents and contractors of NGIA, the Administration Provider and/or the CNP Coordinator with all co-operation and assistance required to enable them to provide the CNP Accreditation Services requested by You, including reasonable access from time to time to the documents and records belonging to You.
- 5.2 You must promptly comply with any reasonable requirements of the CNP Coordinator in relation to Your Application and the CNP Accreditation sought by You.
- 5.3 You warrant that all information made available or provided by You to the CNP Coordinator is, to the best of Your knowledge and belief, true, complete and correct, and You agree to provide prompt written notice of any change in that information which would render it untrue, misleading or incorrect.

6. CNP ACCREDITATION

- 6.1 If:
- (a) You are not in breach of these terms and conditions; and
 - (b) after assessment in accordance with the applicable CNP Accreditation Procedures, the CNP Coordinator is satisfied that CNP Accreditation is appropriate,
- the CNP Coordinator will:
- (c) grant CNP Accreditation, on such terms and conditions as the CNP Coordinator thinks fit, in its absolute discretion;
 - (d) issue You with a Certificate; and
 - (e) grant to You a non exclusive license revocable at will to use the applicable CNP Accreditation Mark for the purpose only of displaying the CNP Accreditation.
- 6.2 The CNP Accreditation contracts are valid for 24 months from the date of accreditation.
- 6.3 If the CNP Coordinator is not satisfied that CNP Accreditation is appropriate they will notify You.

7. AFTER CNP ACCREDITATION

- 7.1 Subject to these terms and conditions, CNP Accreditation continues until expiration, cancellation or termination under this Contract. You may renew

Your CNP Accreditation by a separate Application made to the CNP Coordinator (unless otherwise agreed with NGIA and/or the Committee).

- 7.2 You must comply with all reasonable requirements including the payment of fees and charges that NGIA considers necessary to ensure that CNP Accreditation continues to be appropriate.
- 7.3 You must not, without the consent of NGIA or the CNP Coordinator, alter, modify, deface or destroy the Certificate.
- 7.4 Subject to these terms and conditions, You may publicise the fact that CNP Accreditation has been granted and display the Certificate as evidence of CNP Accreditation. You may copy the Certificate provided that each copy is clearly identified as a copy.
- 7.5 The original and any copies of the Certificate remain the property of the NGIA and must be returned immediately if requested by NGIA, the Administration Provider and/or the CNP Coordinator.
- 7.6 The Certificate is not to be construed as representing, nor does NGIA, the Administration Provider, the CNP Coordinator or any State Association warrant, that CNP Accreditation is approved by any government or governmental or statutory authority.
- 7.7 You must not:
 - (a) engage in any conduct which might mislead, deceive or confuse any person in relation to; or
 - (b) otherwise misrepresent the nature, status, scope or effect of,

Your CNP Accreditation by NGIA.

- 7.8 You must promptly comply with any directions given by the CNP Coordinator to correct any conduct or misrepresentation in breach of clause 7.7.
- 7.9 NGIA may suspend Your CNP Accreditation with immediate effect by giving notice to You if the CNP Coordinator reasonably believes that CNP Accreditation is no longer appropriate or You fail to adhere to the CNP Accreditation Procedures.
- 7.10 If Your CNP Accreditation is suspended:
 - (a) the CNP Coordinator must within 30 days of notifying You of the suspension, furnish You with information outlining the steps that must be taken by You to enable the suspension to be lifted;
 - (b) You must immediately take all steps necessary to enable the suspension of Your CNP Accreditation to be lifted; and
 - (c) You must take all steps reasonably required by the CNP Coordinator to prevent the public being misled or otherwise misinformed.

- 7.11 If the CNP Coordinator is satisfied with the remedial action taken by You, NGIA may lift the suspension of CNP Accreditation by notifying You.
- 7.12 NGIA may cancel Your CNP Accreditation with immediate effect by giving notice to You if Your CNP Accreditation has remained suspended for a period of more than 90 days.
- 7.13 If Your CNP Accreditation expires or is cancelled or the Contract is terminated under clause 12 or You no longer wish to be Accredited, You must immediately:
- (a) pay to the Administration Provider all amounts owing but unpaid by You;
 - (b) cease using any CNP Accreditation Mark licensed in connection with Your CNP Accreditation (if any);
 - (c) withdraw from public display and return to the CNP Coordinator, as required by NGIA, the original and all copies of the Certificate;
 - (d) cease all advertising, promotions or other publication of the fact of CNP Accreditation;
 - (e) take any steps reasonably required by NGIA to notify staff, customers and/or suppliers of the expiry, termination or cancellation of the CNP Accreditation;
 - (f) take steps to repaint or redecorate signage or other parts of Your Site and premises to remove all references to CNP Accreditation;
 - (g) stop using NGIA's confidential information and, at the NGIA's option (as the case may be) return to the CNP Coordinator all NGIA's, the Administration Provider's and/or the State Association's, confidential information in Your possession or control; and
 - (h) take all other necessary steps to ensure that third parties are not misled to believe that the CNP Accreditation has not expired, terminated or been cancelled.

8. CONFIDENTIALITY

- 8.1 NGIA and the Administration Provider will direct its employees, agents and contractors to treat as confidential, and to not disclose to any other third person without Your prior written consent, any confidential information belonging to You with which the NGIA becomes acquainted during the term of the Contract except that, where the NGIA considers it appropriate, the CNP Coordinator may disclose Your identity and the nature, status, scope or effect of Your CNP Accreditation.
- 8.2 You must treat as confidential and not disclose to any third party, without the prior written consent of NGIA (as the case may be), proprietary or confidential information belonging to NGIA.

- 8.3 The obligations of confidentiality under these terms and conditions do not extend to information that:
- (a) is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;
 - (b) is public knowledge (otherwise than as a result of breach of these terms and conditions);
 - (c) is required by an accrediting authority to be disclosed; or
 - (d) is required by law to be disclosed.

9. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that:

- (a) NGIA is the owner in Australia of all copyright, know-how and other intellectual property rights in the CNP program, the Certificate, the CNP Accreditation Mark, the CNP Accreditation Procedures and any associated documentation or material; and
- (b) no right, title or interest in the CNP, the Certificate, the CNP Accreditation Mark, the CNP Accreditation Procedures or that documentation or material is transferred or assigned to You under the Contract.

10. LIMITATION OF LIABILITY

- 10.1 All conditions and warranties implied by statute (including the Trade Practices Act, 1974), general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('non-excludable statutory condition') are excluded from, and do not apply, to these terms and conditions.
- 10.2 NGIA's and the Administration Provider's liability to You for breach of any express provision of these terms and conditions or any non-excludable statutory condition (other than an implied warranty of title) is limited at NGIA's option to:
- (a) provide the CNP Accreditation Services again; or
 - (b) paying the cost of having the CNP Accreditation Services supplied again.
- 10.3 Except to the extent prohibited by the Trade Practices Act, 1974 or any other applicable laws, the entire liability of NGIA, the Administration Provider and each State Association for all claims losses or damages arising out of or related to the Contract and/or the services (including defective services) regardless of the form of action, whether in contract, equity, negligence, intended conduct, tort, statute or otherwise, is limited to and will not exceed, in the aggregate for all claims, actions and causes of action of every kind and

nature, the amount paid to the NGIA, the Administration Provider and each State Association (as the case may be) under the Contract for the specific item that caused the damage or that is the subject matter of, or is directly related to, the cause of action. In no event will the measure of damages payable by NGIA, the Administration Provider or any State Association include, nor will NGIA, the Administration Provider or a State Association be liable for, any amounts for loss of income, profit or savings, loss of data, loss of commercial reputation or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if NGIA, the Administration Provider and/or a State Association have been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed. No cause of action which arises out of an event or events which occurred more than two years prior to the commencement of proceedings alleging a claim or cause of action may be asserted by You or any third party against NGIA, the Administration Provider or a State Association. A reference in this clause to "You", "NGIA" "Administration Provider" and "State Association" includes its respective officers, employees, agents and contractors.

11. INDEMNITY

You must indemnify NGIA, the Administration Provider and each State Association from and against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against NGIA, the Administration Provider or a State Association) that NGIA, the Administration Provider or that State Association may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of these terms and conditions by You, including, but not limited to, a breach in respect of which NGIA, the Administration Provider or a State Association exercises an express right to terminate these terms and conditions; or
- (b) any loss of or damage to any property or injury to or death of any person;
 - (i) caused by any negligent act or omission or wilful misconduct of You or Your officers, contractors and employees; or
 - (ii) arising out of or in connection with Your CNP Accreditation.

12. TERMINATION OF THE CONTRACT

12.1 You may terminate the Contact at any time by giving 30 days' prior notice to the CNP Coordinator.

12.2 In addition to any other right of termination under the Contract, NGIA may terminate the Contact with immediate effect by giving notice to You if:

- (a) You breach any of these terms and conditions (other than in a manner permitting suspension under clause 7.10) and fail to remedy the breach within 30 days after receiving notice requiring You to do so;
- (b) You breach a material provision of these terms and conditions where that breach is not capable of remedy;

- 12.3 In the case of discontinuation of the Certified Nursery Professional program, NGIA reserve the right to terminate the Contact at any time by giving 30 days prior written notice.

13. AFTER TERMINATION

- 13.1 On termination of the Contract, Your CNP Accreditation is cancelled and You must immediately comply with all Your obligations under clause 7.13.
- 13.2 Clauses 8, 9,10,11,12,and 14 continue after termination of the Contract.
- 13.3 Termination of the Contract under clause 13 (Termination) or clause 22 (Force Majeure) does not affect any accrued rights or remedies of either party.

14. APPEALS

- 14.1 (a) You have the right to appeal against the decision by NGIA not to grant CNP Accreditation in respect of Your Application.
- (b) Your appeal must be made in writing and include all details and materials relating to such appeal and be submitted to the CNP Coordinator together with payment of the appropriate fee (if any), within 14 days of being notified of the decision not to grant CNP Accreditation.
- (c) Your appeal will be heard by NGIA through its nominated Committee at its next meeting.
- (d) The CNP Coordinator will inform You of the outcome of the appeal in writing.
- (e) Subject to clause 14.2, the decision of NGIA is final and conclusive.
- 14.2 (a) You have the right to appeal against the activities of NGIA under clause 14.1.
- (b) Your appeal must be made in writing and include all details and materials relating to such appeal and be submitted to the CNP Coordinator together with payment of the appropriate fee (if any), within 14 days of being notified of the decision of NGIA and/or the Administration Provider. Your appeal will be referred to the nominated Committee in writing. The CNP Coordinator will respond to the appeal in writing within 28 days.
- (c) Your appeal will be heard by the NGIA through its nominated Committee.
- (d) The NGIA will inform You and the CNP Coordinator of the outcome of the appeal in writing.
- (e) The decision of the nominated Committee is final and conclusive.

15. ASSIGNMENT

- 15.1 NGIA may assign all or any of its rights under the Contract.

- 15.2 Your rights under this Contract are personal and cannot be assigned, transferred or otherwise disposed.

16. SEVERABILITY

If all or any part of the Contract is found by a Court of competent jurisdiction to be illegal or unenforceable, the illegal or unenforceable part(s) may be severed from the Contract and the remaining parts of the Contract shall continue in force.

17. WAIVER

The failure of NGIA at any time to require performance of any obligation under the Contract is not a waiver of its right at any other time to require performance of that or any other obligation under the Contract.

18. RELATIONSHIP

The Contract does not create any fiduciary, employment, agency or partnership relationship between NGIA, the Administration Provider or a State Association and You.

19. NOTICE

- 19.1 A party giving notice or notifying under the Contract must do so in writing:

- (a) directed to the recipient's address or facsimile number for correspondences nominated in the Application or varied by any notice; and
- (b) hand delivered or sent by prepaid post to that address or facsimile number.

- 19.2 A notice given in accordance with clause 19 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, four days after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

20. HEADINGS

Headings are for ease of reference only and do not affect the meaning of these terms and conditions.

21. FORCE MAJEURE

No party is liable for any failure to perform or delay in performing its obligations under the Contract if that failure or delay is due to flood, fire, earthquake, act of God or other occurrence beyond that party's reasonable control (other than lack of funds). If that failure or delay exceeds 60 days, the other party may terminate the Contract, without penalty (except for antecedent breaches) and with immediate effect by giving notice to the other party.

22. CONSENT

Where the consent or approval of NGIA, the Administration Provider or the CNP Coordinator is required under the Contract then, unless otherwise stipulated to the contrary, such consent or approval may be given, withheld or conditioned, as NGIA, the Administration Provider or the CNP Coordinator thinks fit, in its absolute discretion. Any consent or approval given must be in writing.

23. GOVERNING LAW AND JURISDICTION

23.1 The Contract is governed by the law applicable in New South Wales, Australia.

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.